



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: April 28, 2014

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary *Ben Brancel*
Steve Ingham, Division of Food Safety Administrator *Steve Ingham*

SUBJECT: ATCP 88, 75 & 70 - Regulation of Egg Grading, Handling, Packaging, Labeling, and Retail Sales and Affecting Small Business; Hearing Draft

PRESENTED BY: Steve Ingham

REQUESTED ACTION:

At the May 14, 2014 Board meeting, the department will ask the DATCP Board to authorize public hearings on a proposed rules related to grading and labeling, handling, packaging, and retail sales of eggs. Current regulations related to shell eggs are found in several administrative rules and the proposed rule changes affect ATCP 88, Egg Grading, Handling and Labeling; ATCP 70, Food Processing Plants; and ATCP 75, Retail Food Establishments.

SUMMARY:

Background

The Division of Food Safety (DFS) has received numerous inquiries requesting clarification of the licensing and inspection requirements for shell eggs, particularly from people who seek to sell eggs at their farm or at farmers' markets. This proposed rule is a comprehensive revision of food safety regulations related to eggs. If adopted, the rule will assist those people who seek to sell a small number of shell eggs, as well as those who operate larger egg production businesses, by clarifying licensing and inspection requirements. The rule was also developed in response to a request from the legislature. The Assembly Committee on Consumer Protection reviewed ATCP 88, Egg Grading, Handling and Labeling as part of the legislature's "Right the Rules" initiative. The committee identified inconsistencies and potential improvements to the rule and sent a letter requesting that DATCP consider revising the rule to address those issues. Further, this rule will implement 2013 Wisconsin Act 245, which exempted egg producers with a flock of not more than 150 birds who sell eggs directly to the consumer on the premises where the eggs were laid, at a farmers' market or on an egg sales route from obtaining a food processing license if they meet packaging and labeling requirements.

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Rule Content

The proposed rule repeals the existing ATCP 88, Egg Grading, Handling and Labeling and comprehensively rewrites it to clarify the regulatory requirements applicable to egg producers and egg handlers, and makes minor revisions to ATCP 70 and 75. The rule consolidates egg-related requirements in one rule, reducing the need for egg producers to consult multiple chapters of rules to understand regulatory requirements. The proposed rule will help businesses by eliminating the requirement for small-scale egg producers to hold a food processing plant license when selling eggs at a farmers' market, on an egg sales route, or at the egg producer's farm. The proposed rule also removes obsolete provisions in the existing rule, provides explanations to improve rule clarity, and spells out federal registration requirements that must also be met by some egg producers and egg handlers. Specifically, the proposed rule addresses the following:

Food Processing Plant and Retail Establishment Rules

The rule revises ATCP 70, Food Processing Plants, to clarify that egg producers, with flocks of not more than 150 birds, are exempt from food processing plant licensing requirements, provided they only sell eggs directly to consumers on the premises where the eggs are laid, at a farmers' market, or on an egg-sales route. The rule also exempts, from food processing plant license requirements, egg producers registered with the department who sell nest-run eggs from flocks of more than 150 birds to a licensed egg handler.

The rule modifies ATCP 70 to refer egg handlers licensed as food processors to specific sections of ATCP 88 that relate to construction, maintenance, sanitation, packaging and labeling requirements for egg handling.

The rule also revises the Wisconsin Food Code, which is found in the appendix of ATCP 75, Retail Food Establishments, to clarify that eggs sold by egg handlers holding a food processing plant license issued by another state, or who are selling eggs directly to the consumer and exempted under ATCP 88.02, are allowed to sell eggs at retail. The rule also updates the cited location of restricted egg tolerances from ATCP 88.06 to ATCP 88.26.

Title and Organization

The rule retitles ATCP 88 from "Egg Grading, Handling, and Labeling" to "Eggs", reflecting the broader scope of the rule. The revised rule organizes provisions into six subchapters to improve ease of use, reorganizes and rennumbers existing provisions that are retained from the current rule, and creates new provisions throughout the rule.

General Provisions

ATCP 88.01-Definitions. The rule adds definitions to ATCP 88 for "ambient temperature," "balut," "check," "egg handler," "egg producer," "egg sales route," "farmers' markets," "incubator reject," "leaker," "loss," "nest-run," "official egg products plant," "restricted egg," "storage," and

“U.S. Consumer Grade B”. The rule also expands the definition of “egg” to include turkey, duck, goose, guinea or avian species whose eggs are consumed by humans. The rule also creates a definition for each federal regulation related to eggs.

ATCP 88.02-Licensing and registration. The rule creates a provision describing food processing plant, food warehouse, and retail food establishment licensing and registration requirements for egg handling. The rule creates exemptions, consistent with 2013 Wisconsin Act 245, to the food processing plant license requirements for certain very small egg producers who sell eggs directly to consumers, if they meet temperature and labeling requirements. The rule also exempts egg producers who sell nest-run eggs from licensing if they register with the department. The rule clarifies that a retail food establishment license is required to sell eggs directly to consumers including sales at farmers’ markets and on egg sales routes. Consistent with existing division policy, a retail food establishment license will not be required for eggs sold directly to consumers at the small-scale egg producer’s premises.

ATCP 88.04-Federal registrations and records. Under federal law, the Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA) require registration for certain egg producers and handlers. The rule requires egg producers to comply with FDA or USDA requirements for registration. To ensure Wisconsin egg producers are meeting critical food safety requirements in the federal egg safety rule (21 CFR 118.11), the revised rule requires Wisconsin egg handlers, receiving eggs from producers who own 3,000 or more laying birds, to maintain records showing that the producers are registered with the FDA. Registration is one way to ensure that large egg producers covered by the federal egg safety rule are meeting federal regulations designed to reduce the risk of *Salmonella enteritidis*.

Egg Facilities

ATCP 88.06-Egg handling and storage facilities. The rule lists requirements, consistent with those for all food processing plants, related to construction and maintenance of egg handling and storage facilities, doors and windows, lighting, toilet facilities, cleaning facilities, garbage and refuse disposal, and control of pests.

ATCP 88.08-Egg handling rooms. The rule retains the requirement that egg storage areas maintain eggs at appropriate temperatures and be equipped with temperature measuring devices. The rule also retains the requirement that candling areas be dark enough to permit accurate determinations of egg quality. The rule adds cleanliness requirements for egg washing and egg grading rooms.

ATCP 88.10-Operations water. The rule specifies requirements to ensure water, used in egg handling facilities, is tested and meets drinking water standards. Egg handling facilities are required to keep the results of all health-related tests conducted on operations water.

Equipment and Utensils

ATCP 88.12-Equipment and utensil requirements. The rule presents requirements to ensure equipment and utensils used in egg handling establishments are of sanitary design and construction.

ATCP 88.14-Cleaning and sanitizing equipment and utensils. The rule requires that all egg contact surfaces of equipment and utensils be cleaned and sanitized after each day's use, or more frequently if necessary. It outlines the procedure for obtaining department approval for alternative cleaning and sanitizing procedures and methods for storing equipment and utensils.

Egg Handling Operations

ATCP 88.16-Personnel standards. The rule lists requirements for personnel, including cleanliness, clothing and jewelry, employee health, and prohibitions against consumption of food or beverages, or use of tobacco in egg handling rooms.

ATCP 88.18-Temperature standards. The current rule identifies temperature standards for eggs before and after packing. It prohibits the sale of shell eggs that have been frozen. The revised rule maintains those standards and adds temperature standards for eggs during transport and at retail sale, with the retail sale temperature standards consistent with the Wisconsin Food Code. The revised rule adds temperatures standards for baluts, which are edible fertile eggs.

ATCP 88.20-Egg cleaning and storage operations. The revised rule modifies requirements for egg cleaning and storage. It no longer cites the "List of Proprietary Substances and Nonfood Compounds", which is no longer published by USDA, as a reference for identifying acceptable egg- cleaning or -sanitizing compounds. Instead the rule requires that compounds meet requirements found in 21 CFR part 178.1010 and be registered with the U.S. Environmental Protection Agency (EPA). The revised rule adds provisions requiring that dirty eggs, which cannot be cleaned, shall be discarded and that eggs shall be handled and stored in a safe, sanitary and orderly manner to protect the safety of the eggs and allow for ready inspection and movement of eggs.

ATCP 88.22-Candling. The rule requires a candling light or automated grading equipment for determining the interior and exterior quality of eggs, and use of a candling light to verify the performance of automated grading equipment.

ATCP 88.24-Grading standards for chicken eggs. The revised rule clarifies that grading standards apply to chicken eggs only. The rule maintains the current requirement that graded eggs sold or distributed in Wisconsin shall be labeled for grade and meet grade B or better standards under the United States grade standards, unless they are clearly labeled as "ungraded." The rule maintains the current size or weight class requirement for chicken egg sizes. The rule adds a table illustrating weights for each size or weight class.

ATCP 88.26-Minimum tolerance standards. The revised rule maintains the prohibition against selling eggs graded as less than grade B, whether labeled as “graded” or “ungraded,” unless the eggs are sold on the premises directly to a household consumer and the eggs are labeled as “ungraded.”

ATCP 88.28-Restricted eggs. The revised rule adds a prohibition against the sale of restricted eggs and provisions describing the disposition of restricted eggs.

ATCP 88.30-Shell egg protection. The rule maintains the current provision that oiling eggs, to protect shells, shall be performed in a manner that prevents egg contamination and preserves egg quality. The revised rule removes the requirement that oil used to protect eggs must be listed in the “List of Proprietary Substances and Nonfood Compounds”, which USDA no longer publishes, and substitutes a requirement that oil must comply with 21 CFR parts 172.878 and 178.3620(a) relating to mineral oil.

Packing and Labeling

ATCP 88.32-Egg packing. The rule maintains current requirements related to egg packing, but revises the title of ATCP 82.32(1) to clarify that packing practices shall maintain egg quality. The revised rule adds provisions that eggs may be packed in used, clean cartons as long as the seller obliterates all markings that do not pertain to the eggs being sold.

ATCP 88.34-Egg labeling. The rule maintains the current requirements related to egg labeling, except that it adds the requirement that egg cartons include a label with the statement “SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly.” The rule specifies the font size and location of the safe handling label. The rule maintains requirements related to the packing date, expiration date, and use by date and requirements related to egg shipping containers.

ATCP 88.36-Labeling of baluts. The rule adds a provision establishing labeling requirements for baluts, including a label clearly indicating that baluts should be stored at a temperature of 41°F or colder.

ATCP 88.38-Deceptive practices. The rule retains the current provisions against deceptive practices, with an added prohibition against any nutrient content or health claims that do not comply with the requirements of 21 CFR part 101.

ATCP 88.40-Dealers buying eggs from producers; receipts. The revised rule maintains the provision related to dealers buying eggs from producers except that, for clarity, it re-organizes the provisions into three, rather than two provisions.

ATCP 88.42-Recall plan. The revised rule requires egg handlers to develop a written plan for recalling eggs in the event of a foodborne illness linked to the eggs handled at the establishment. The rule identifies the recall plan contents, and requires the egg handler to update the plan as necessary and make it available to the department for inspection and copying upon request.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

In general, rules designed to ensure egg safety and consistent quality and marketing of eggs cover activities related to flock health and farm sanitation; egg grading, sanitation, temperature control, packaging, and labeling at egg processing facilities; and transportation, handling and storage of eggs for retail sale. Federal egg regulations consist of several rules involving two agencies, each responsible for different activities designed to promote egg safety and consistent egg quality and marketing. One objective of this rulemaking process is to clearly differentiate Wisconsin's requirements and those of federal agencies in regulating egg packaging and sales.

Federal Egg Regulations

The Egg Products Inspection Act (Title 21 USC, Chapter 15) authorized the USDA to create regulations (7 CFR Part 57) for egg processing operations. Egg processing operations, defined in the revised ATCP 88 as "official egg products plants," generally make products other than shell eggs, such as pasteurized whole eggs and dried egg whites. For eggs moving in interstate or foreign commerce, federal law and regulations pre-empt state statutes and regulations relating to temperature control, quality or grade, condition, weight or quantity. A voluntary egg grading service is administered by USDA under the authority of the Agricultural Marketing Act of 1946 as amended (Title 7 USC, Chapter 1621 et seq.; referred to in revised ATCP 88 as the "federal egg grading act") and requirements formerly found in 7 CFR part 56, but now available as guidance from USDA's Agricultural Marketing Service (AMS 56), using essentially the same egg grading standards which are contained in revised ATCP 88.

Under the Federal Food, Drug and Cosmetic Act (Title 21 USC, Chapter 9), and the Public Health Service Act (Title 42 USC, Chapter 264), the US Food and Drug Administration (FDA) has enacted egg safety regulations (21 CFR parts 16.5 (a) (5) and 118, referred to in revised ATCP 88 as the "egg safety rule") applying to shell egg producers with 3,000 or more laying hens at a particular farm, who are not selling all of the eggs directly to consumers or are transporting eggs for processing. The regulations require these egg producers to register with FDA and to develop a written *Salmonella enteritidis* prevention plan for each farm.

Federal and State Regulatory Roles

Within USDA, the Animal and Plant Health Inspection Service (APHIS) is responsible for activities related to disease control in flocks of laying hens. In addition, the Agricultural Marketing Service (AMS) is responsible for quality grading for shell eggs and the Shell Egg Surveillance program, which ensures eggs for sale meet Grade B or better standards. Finally, the Food Safety and Inspection Service (FSIS) is responsible for inspecting egg products sold in interstate commerce and re-inspecting imported egg products. The FDA, on the other hand, is responsible for ensuring sanitation and safety control measures at the farm, monitoring safe handling and good manufacturing practices in shell egg packaging plants that do not use the USDA's shell egg grading service, and for managing recalls involving shell eggs or egg products inspected by either the FDA or the USDA. State and local agencies typically are responsible for working in

cooperation with the FDA to inspect shell egg packaging plants that do not use the USDA's shell egg grading service and for inspecting retail food establishments. Wisconsin currently regulates voluntary egg grading in plants that do not use the USDA's shell egg grading service; egg packaging and warehouse activities, and retail sales of eggs.

Comparison with Rules in Adjacent States

Illinois requires egg producers to hold a limited or full license, for \$15 and \$50, respectively. Illinois also assesses a per-case inspection fee on eggs sold in-state. Egg producers are not required to hold an Illinois egg license to sell nest-run eggs from the producer's flock to household consumers for the consumers' own personal use. The eggs must be sold on the premises where the flock is located. Producers who sell eggs to licensed grading stations also do not require an Illinois egg license. A limited producer-dealer egg license is required for producers selling graded eggs from their own flock of fewer than 3,000 birds when the eggs are sold off the premises from where the flock is located.

Iowa requires handlers of candled and graded eggs to hold a license, the cost of which is based on the number of eggs sold in a "snapshot" month. The fee ranges from \$15 for egg handlers who purchase or handle fewer than 125 cases in the month of April of a calendar year to \$250 for those who purchase or handle 10,000 cases or more during that month. Producers, who sell eggs exclusively from their own flocks directly to handlers, or to consumers, are exempt from licensing.

Michigan does not require a license for selling eggs obtained from flocks of fewer than 3,000 laying hens if the sales are made directly to consumers. Any other sales, including those transacted with consumers by internet, mail, or consignment, are only allowed if the seller holds a \$175 license.

Minnesota assesses an annual inspection fee, based on number of eggs sold, which ranges in cost from \$12.50 to \$312. A food handler license is also required for certain sales. The cost of a food handler license is based on the gross annual food sales and ranges from \$77 for establishments with gross annual food sales of less than \$50,000 to \$2,001 for establishments with gross food sales of over \$25 million. Producers may sell eggs directly from their farm to individual customers without meeting licensing, registration, or inspection requirements. Producers may also sell eggs at farmers' markets without licensing or registration, but the eggs must be candled, labeled with the producer's name and address and kept at a temperature of 45° F or colder. Producers with fewer than 3,000 hens may sell eggs to grocery stores, restaurants or other food businesses without a license if they register with the Minnesota Department of Agriculture (MDA). There is no fee for registration and no routine inspection of the producer, although MDA may inspect the premises if they receive a complaint about the producer.

Currently, Wisconsin egg handlers must hold a food processing plant license (potentially hazardous foods category) with the license fee based on annual sales and ranging from \$95 for establishments with annual sales of less than \$25,000 to \$835 for food processors with annual sales of at least \$250,000. Wisconsin currently also requires egg producers who sell eggs directly to consumers at venues other than their farms, such as at a farmers' market, to hold a retail food

establishment license. The fee for a retail food establishment license issued by DATCP ranges from \$45 to \$685, depending on the scope of the establishment and its total annual sales, with small egg producers typically paying \$45. If the retail sales occur in jurisdictions where local health agents are under contract with the department to conduct retail food establishment inspections, the fees may differ. This revision to ATCP 88 features exemptions from the food processing plant license for producers who sell eggs from small flocks, and producers who sell only nest-run eggs to egg handlers. This approach is consistent with that taken in neighboring states to minimize regulatory costs for small-scale direct-sale egg producers.

USDA grading standards are adopted in each of our neighboring states and those standards generally require that eggs sold to retailers must be Grade B or better. Illinois, Iowa, and Minnesota require candled eggs to be stored at 45° F or colder. Michigan requires eggs to be held and transported at no more than 45° F ambient temperature beginning 36 hours after the time of laying. Illinois requires nest-run eggs to be held at 60° F or less at all times. Since temperature control is an essential means of protecting the public from egg-borne illnesses, the Wisconsin rule requires eggs handled by licensed operators to be kept at 45° F or colder before and after packing and during transport, and 41° F or colder for retail sale. Egg producers who are exempt from the requirement to hold a food processing plant license must keep the eggs at an ambient temperature of 41 degrees Fahrenheit or below for retail sale.

Illinois, Iowa and Minnesota require record-keeping associated with graded-egg sales and retention of these records for varying lengths of time. Wisconsin's rule is consistent with neighboring states in this regard.

Next Steps

If the Board authorizes public hearings on this rule, the department will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. The department plans to hold hearings in Wausau, Mauston, Fond du Lac, and Madison in July and August 2014.

Following the public hearings, the department will evaluate all comments received at the hearings and prepare a final draft rule for the Board's consideration. If the Board approves a final draft rule, the department will transmit the final draft rule for the Governor's approval. After the Governor's approval, the final draft will be submitted for legislative committee review. If the Legislature has no objections to the rule, the Secretary will sign the final rulemaking order and transmit it for publication. The rule will take effect upon publication in the Wisconsin Administrative Register unless the final draft rule specifies a later effective date.

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection hereby proposes the
2 following rule *to amend* ATCP 75 (appendix) (3-202.13); *to repeal and recreate* ATCP 88; and
3 *to create* ATCP 70.02 (16) (h) and (i), 70.04 (17), 70.06 (11), 70.09 (8), 70.10(6), and ATCP 75
4 (appendix) (3-201.11) (H); *relating to* egg grading, handling and labeling, and affecting small
5 business.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

This proposed rule modifies: ATCP 88, Wis. Adm. Code, related to egg grading, handling and labeling; ATCP 70, Wis. Adm. Code, related to food processing plants; and, ATCP 75, Wis. Adm. Code, related to retail food establishments. The proposed rule comprehensively revises ATCP 88 to clarify the regulatory requirements applicable to egg producers and egg handlers. The proposed rule makes minor revisions to ATCP 70 and 75, moving primary egg regulation to ATCP 88. By placing requirements for licensing, facilities, equipment and utensils, egg handling operations, packing and labeling, recordkeeping and recall planning in ATCP 88, the proposed rule limits the need for small egg-business operators to consult multiple chapters of rules. The proposed rule will implement 2013 Wisconsin Act 245 by eliminating the requirement for small-scale egg producers to hold a food processing plant license when selling eggs to consumers at a farmers' market, on an egg sales route, or at the egg producer's farm. The proposed rule removes obsolete provisions in the existing rule. The proposed rule also provides explanations to improve rule clarity and spells out federal egg safety registration requirements that must also be met by some egg producers and egg handlers.

Statutes Interpreted

Section 97.29(1) (g) and 2(a), Stats., (Food processing plants) and 97.28, Stats., (Direct sale of eggs).

Statutory Authority

Sections 93.07 (1), 97.09 (4), 97.28 and 97.29 (1) (g) and (2)(a), Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 97.09(4), Stats., to establish and enforce rules that are needed to protect the public from the sale of adulterated or misbranded foods and govern the production, processing, packaging, labeling, transportation, storage, handling, display, sale, and distribution of foods. DATCP has general authority under s. 97.29 (1) (g), Stats., to exempt by rule certain activities from the definition of “food processing.” It also has specific authority, pursuant to s. 97.28, Stats., to not require a food processing plant license for collection, packing, and storage of eggs by an egg producer, with a flock of not larger than 150 birds, who sells those eggs only to consumers at farmers’ markets, on egg sales routes, or at the egg producer’s premises.

Related Statutes and Rules

Section 97.28, Stats., requires DATCP to exempt small-scale egg producers who sell eggs directly to consumers on the premises where the eggs are laid, on egg sales routes, and at farmer’s markets from the requirement of holding a food processing plant license. Section 97.29 Stats., also authorizes DATCP to exempt certain food processing activities by rule. Section 97.10, Stats., prohibits the sale of adulterated or misbranded food as defined in ss. 97.02 and 97.03, Stats., including food for which the identity is misrepresented. Section 100.183, Stats., prohibits deceptive advertising of food.

Plain Language Analysis

This proposed rule repeals the existing ATCP 88, Egg Grading, Handling and Labeling, and creates a new rule, ATCP 88, Eggs, to consolidate licensing, egg handling, grading, packing, and retail sale requirements into one rule. Specifically, the proposed rule addresses the following:

Food Processing Plant and Retail Establishment Rules

- The rule revises ATCP 70, Food Processing Plants, to clarify that egg producers, with flocks of not more than 150 birds, are exempt from food processing plant licensing requirements, provided they only sell eggs directly to consumers on the premises where the eggs are laid, at a farmers’ market, or on an egg-sales route.
- The rule revises ATCP 70, Food Processing Plants, to clarify that egg producers, with flocks of more than 150 birds, who only collect nest-run eggs to sell to licensed egg handlers, are exempt from food processing plant licensing requirements, provided they register with the department.
- The rule refers egg handlers who hold a food processing plant license to specific sections of ATCP 88 that relate to construction, maintenance, sanitation, packaging and labeling requirements for egg handling.
- The rule also revises the Wisconsin Food Code found in the appendix of ATCP 75, Retail Food Establishments, to clarify that eggs sold by egg handlers holding a food processing plant license issued by another state, or who are selling eggs directly to the consumer and

exempted under ATPC 88.02, are allowed to sell eggs at retail. The rule also updates the cited location of restricted egg tolerances from ATPC 88.06 to ATPC 88.26.

Title and Organization

- The rule retitles ATPC 88 from “Egg Grading, Handling, and Labeling” to “Eggs”, reflecting the broader scope of the rule. The revised rule organizes provisions into six subchapters to improve ease of use, reorganizes and rennumbers existing provisions that are retained from the current rule, and creates new provisions throughout the rule.

General Provisions

- ATPC 88.01-Definitions. The rule adds definitions to ATPC 88 for “ambient temperature,” “balut,” “check,” “egg handler,” “egg producer,” “egg sales route,” “farmers’ markets,” “incubator reject,” “leaker,” “loss,” “nest-run,” “official egg products plant,” “restricted egg,” “storage,” and “U.S. Consumer Grade B”. The rule also expands the definition of “egg”, now limited to chicken eggs, to include turkey, duck, goose, guinea or other avian species whose eggs are used for human consumption. The rule also separates each federal regulation, related to eggs, into a discrete definition. These changes provide additional support and clarity to the regulatory requirements in the rule.
- ATPC 88.02-Licensing and registration. The rule creates a provision describing food processing plant, food warehouse, and retail food establishment licensing and registration requirements for egg handling. The rule continues to require anyone who conducts egg handling activities to acquire a food processing plant license, but specifies two exemptions: 1) Egg producers who collect, pack, and store eggs, from a flock of not more than 150 birds, and only sell eggs directly to the consumer at the premises where the eggs are laid, a farmers’ market, or on an egg sales route. The rule requires those exempted producers to label packages of eggs, sold under this exemption, as ungraded and uninspected, and include the seller’s name, address, and pack date. 2) Egg producers who collect nest-run eggs from a flock of more than 150 birds, register with DATCP, and sell the nest-run eggs to a licensed egg handler. The revision clarifies that a retail food establishment license is required to sell eggs directly to consumers at sites other than the premises where the eggs were laid, including sales at farmers’ markets and on egg sales routes. A retail food establishment license is not required for eggs sold directly to consumers at the egg producer’s premises.
- ATPC 88.04-Federal registrations and records. Under federal law, the Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA) require egg registration for certain egg producers and handlers, so these agencies may identify those egg producers and handlers required by federal law to meet federal regulations designed to reduce the risk of *Salmonella enteritidis* contamination and ensure the sale of wholesome eggs in commerce. This revision to ATPC 88 requires egg producers to register with the FDA if they are required to do so under 21 CFR 118.11 of the federal egg safety rule. Generally, egg producers with flocks of 3,000 birds or more are required to register with the FDA and meet requirements designed to reduce the risk of *Salmonella enteritidis* contamination. To ensure Wisconsin egg producers are meeting critical safety requirements in the federal egg safety act, the revised rule also requires Wisconsin egg handlers, receiving

eggs from producers who own 3,000 or more laying birds, to maintain records showing that the producers are registered with the FDA. The rule also requires egg handlers who grade and pack eggs for the ultimate consumer to register with the USDA, if required to do so under 7 CFR 57.690 of the federal egg products inspection act. Egg producers and egg handlers are not required to register if they are exempted under the federal egg safety rule or federal egg products inspection act.

Egg Facilities

- ATCP 88.06-Egg handling and storage facilities. The rule lists requirements, consistent with those for all food processing plants, related to construction and maintenance of egg handling and storage facilities, doors and windows, lighting, toilet facilities, cleaning facilities, garbage and refuse disposal, and control of pests.
- ATCP 88.08-Egg handling rooms. The rule retains the requirement that egg storage areas maintain eggs at appropriate temperatures and be equipped with temperature measuring devices. The rule also retains the requirement that candling areas be dark enough to permit accurate determinations of egg quality. The rule adds cleanliness requirements for egg washing and egg grading rooms.
- ATCP 88.10-Operations water. The rule specifies requirements to ensure water, used in egg handling facilities, is tested and meets drinking water standards. Egg handling facilities are required to keep the results of all health-related tests conducted on operations water.

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- ATCP 88.20-Egg cleaning and storage operations. The revised rule modifies requirements for egg cleaning and storage. It no longer cites the reference to the "List of Proprietary Substances and Nonfood Compounds", which is no longer published by USDA, as a reference for identifying acceptable egg- cleaning or -sanitizing compounds. Instead the rule requires that compounds meet requirements found in 21 CFR part 178.1010 and be registered with the U.S. Environmental Protection Agency (EPA). The revised rule adds provisions requiring that dirty eggs, which cannot be cleaned, shall be discarded and that eggs shall be handled and stored in a safe, sanitary and orderly manner to protect the safety of the eggs and allow for ready inspection and movement of eggs.
- ATCP 88.22-Candling. The rule requires use of a candling light or automated grading equipment for determining the interior and exterior quality of eggs, and use of a candling light to verify the performance of automated grading equipment.
- ATCP 88.24-Grading standards for chicken eggs. The revised rule clarifies that grading standards apply to chicken eggs only. The rule maintains the current requirement that graded eggs sold or distributed in Wisconsin shall be labeled for grade and meet grade B or better standards under the United States grade standards, unless they are clearly labeled as "ungraded." The rule maintains the current size or weight class requirement for chicken egg sizes. The rule adds a table illustrating weights for each size or weight class.
- ATCP 88.26-Minimum tolerance standards. The revised rule maintains the prohibition against selling eggs graded as less than grade B, whether labeled as "graded" or "ungraded," unless the eggs are sold on the premises directly to a consumer and the eggs are labeled as "ungraded."
- ATCP 88.28-Restricted eggs. The revised rule adds a prohibition against the sale of restricted eggs and provisions describing the disposition of restricted eggs.
- ATCP 88.30-Shell egg protection. The rule maintains the current provision that oiling eggs, to protect shells, shall be performed in a manner that prevents egg contamination and preserves egg quality. The revised rule removes the requirement that oil used to protect eggs must be listed in the "List of Proprietary Substances and Nonfood Compounds", which USDA no longer publishes, and substitutes a requirement that oil must comply with 21 CFR parts 172.878 and 178.3620(a) relating to mineral oil.

Packing and Labeling

- ATCP 88.32-Egg packing. The rule maintains current requirements related to egg packing, but revises the title of ATCP 82.32(1) to clarify that packing practices shall maintain egg quality. The revised rule adds provisions that eggs may be packed in used, clean cartons as long as the seller obliterates all carton markings that do not pertain to the eggs being sold.
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eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly.” The rule specifies the font size and location of the safe handling label. The rule maintains requirements related to the packing date, expiration date, and use by date and requirements related to egg shipping containers.

- ATCP 88.36-Labeling of baluts. The rule adds a provision establishing labeling requirements for baluts, including a label clearly indicating that baluts should be stored at a temperature of 41°F or colder.
- ATCP 88.38-Deceptive practices. The rule retains the current provisions against deceptive practices, with an added prohibition against any nutrient content or health claims that do not comply with the requirements of 21 CFR part 101.
- ATCP 88.40-Dealers buying eggs from producers; receipts. The revised rule maintains the provision related to receipts provided by dealers buying eggs from producers except that, for clarity, it reorganizes the provisions into three, rather than two provisions.
- ATCP 88.42-Recall plan. The revised rule requires egg handlers to develop a written plan for recalling eggs in the event of a foodborne illness linked to the eggs handled at the establishment. The rule identifies the recall plan contents, and requires the egg handler to update the plan as necessary and make it available to the department for inspection and copying upon request.

Summary of, and Comparison with Existing or Proposed Federal Statutes and Regulations

In general, rules designed to ensure egg safety and consistent quality and marketing of eggs cover activities related to flock health and farm sanitation; egg grading, sanitation, temperature control, packaging, and labeling at egg processing facilities; and transportation, handling and storage of eggs for retail sale. Federal egg regulations consist of several rules involving two agencies, each responsible for different activities designed to promote egg safety and consistent egg quality and marketing. One objective of this rulemaking process is to clearly differentiate Wisconsin’s requirements and those of federal agencies in regulating egg packaging and sales.

Federal Egg Regulations

The Egg Products Inspection Act (Title 21 USC, Chapter 15) authorized the USDA to create regulations (7 CFR Part 57) for egg processing operations. Egg processing operations, defined in the revised ATCP 88 as “official egg products plants,” generally make products other than shell eggs, such as pasteurized whole eggs and dried egg whites. Additional USDA regulations, created under this act, authorize at least yearly inspection of hatcheries and at least quarterly inspection of businesses that pack shell eggs for the ultimate consumer. As part of these inspections, USDA assures that egg packages are labeled “Keep Refrigerated” and stored at 45°F or less. For eggs moving in interstate or foreign commerce, federal law and regulations pre-empt state statutes and regulations relating to temperature control, quality or grade, condition, weight or quantity. A voluntary egg grading service is administered by USDA under the authority of the Agricultural Marketing Act of 1946 as amended (Title 7 USC, Chapter 1621 et seq.; referred to in revised ATCP 88 as the “federal egg grading act”) and requirements formerly found in 7 CFR

part 56, but now available as guidance from USDA's Agricultural Marketing Service (AMS 56), using essentially the same egg grading standards which are contained in revised ATCP 88.

Under the Federal Food, Drug and Cosmetic Act (Title 21 USC, Chapter 9), and the Public Health Service Act (Title 42 USC, Chapter 264), the US Food and Drug Administration (FDA) has enacted egg safety regulations (21 CFR parts 16.5 (a) (5) and 118, referred to in revised ATCP 88 as the "egg safety rule") applying to shell egg producers with 3,000 or more laying hens at a particular farm, who are not selling all of the eggs directly to consumers or are transporting eggs for processing. The regulations require these egg producers to register with FDA and to develop a written *Salmonella enteritidis* prevention plan for each farm. The plan must address procurement of chicks, environmental testing, cleaning and disinfection, biosecurity, pest control, and egg refrigeration. The regulations also require testing of eggs for *Salmonella enteritidis*.

Federal and State Regulatory Roles

Within USDA, the Animal and Plant Health Inspection Service (APHIS) is responsible for activities related to disease control in flocks of laying hens. In addition, the Agricultural Marketing Service (AMS) is responsible for quality grading for shell eggs and the Shell Egg Surveillance program, which ensures eggs for sale meet Grade B or better standards. Finally, the Food Safety and Inspection Service (FSIS) is responsible for inspecting egg products sold in interstate commerce and re-inspecting imported egg products. The FDA, on the other hand, is responsible for ensuring sanitation and safety control measures at the farm, monitoring safe handling and good manufacturing practices in shell egg packaging plants that do not use the USDA's shell egg grading service, and for managing recalls involving shell eggs or egg products inspected by either the FDA or the USDA.

State and local agencies typically are responsible for working in cooperation with the FDA to inspect shell egg packaging plants that do not use the USDA's shell egg grading service and for inspecting retail food establishments. Wisconsin currently regulates voluntary egg grading in plants that do not use the USDA's shell egg grading service; egg packaging and warehouse activities, and retail sales of eggs.

Comparison with Rules in Adjacent States

Illinois requires egg producers to hold a limited or full license, for \$15 and \$50, respectively. Illinois also assesses a per-case inspection fee on eggs sold in-state. Egg producers are not required to hold an Illinois egg license to sell nest-run eggs from the producer's flock to household consumers for the consumers' own personal use. The eggs must be sold on the premises where the flock is located. Producers who sell eggs to licensed grading stations also do not require an Illinois egg license. A limited producer-dealer egg license is required for producers selling graded eggs from their own flock of fewer than 3,000 birds when the eggs are sold off the premises from where the flock is located.

Iowa requires handlers of candled and graded eggs to hold a license, the cost of which is based on the number of eggs sold in a "snapshot" month. The fee ranges from \$15 for egg handlers who purchase or handle fewer than 125 cases in the month of April of a calendar year to \$250 for those who purchase or handle 10,000 cases or more during that month. Producers, who sell eggs

exclusively from their own flocks directly to handlers, or to consumers, are exempt from licensing.

Michigan does not require a license for selling eggs obtained from flocks of fewer than 3,000 laying hens if the sales are made directly to consumers. Any other sales, including those transacted with consumers by internet, mail, or consignment, are only allowed if the seller holds a \$175 license.

Minnesota assesses an annual inspection fee, based on number of eggs sold, which ranges in cost from \$12.50 to \$312. A food handler license is also required for certain sales. The cost of a food handler license is based on the gross annual food sales and ranges from \$77 for establishments with gross annual food sales of less than \$50,000 to \$2,001 for establishments with gross food sales of over \$25 million. Producers may sell eggs directly from their farm, to individual customers, without meeting any licensing, registration, or inspection requirements. Producers may also sell eggs at farmers' markets without licensing or registration, but the eggs must be candled, labeled with the producer's name and address and kept at a temperature of 45° F or colder. Producers with fewer than 3,000 hens may sell eggs to grocery stores, restaurants or other food businesses without a license if they register with the Minnesota Department of Agriculture (MDA). There is no fee for registration and no routine inspection of the producer, although MDA may inspect the premises if they receive a complaint about the producer.

Currently, Wisconsin egg handlers must hold a food processing plant license (potentially hazardous foods category) with the license fee based on annual sales and ranging from \$95 for establishments with annual sales of less than \$25,000 to \$835 for food processors with annual sales of at least \$250,000. Wisconsin currently also requires egg producers who sell eggs directly to consumers at venues other than their farms, such as at a farmers' market, to hold a retail food establishment license. The fee for a retail food establishment license issued by DATCP ranges from \$45 to \$685, depending on the scope of the establishment and its total annual sales, with small egg producers typically paying \$45. If the retail sales occur in jurisdictions where local health agents are under contract with the department to conduct retail food establishment inspections, the fees may differ. This revision to ATCP 88 features exemptions from the food processing plant license requirement for producers who sell eggs from small flocks directly to consumers at specified venues, and producers who sell only nest-run eggs to egg handlers. This approach is consistent with that taken in neighboring states to minimize regulatory costs for small-scale direct-sale egg producers.

USDA grading standards are adopted in each of our neighboring states and those standards generally require that eggs sold to retailers must be Grade B or better. Illinois, Iowa, and Minnesota require candled eggs to be stored at 45° F or colder. Michigan requires eggs to be held and transported at no more than 45° F ambient temperature beginning 36 hours after the time of laying. Illinois requires nest-run eggs to be held at 60° F or less at all times. Since temperature control is an essential means of protecting the public from egg-borne illnesses, the Wisconsin rule requires eggs handled by licensed operators to be kept at 45° F or colder before and after packing and during transport, and 41° F or colder for retail sale. Wisconsin egg producers who are exempted under 2013 Wisconsin Act 245 from the requirement to hold a food processing plant license must hold at eggs at 41° F or colder for retail sale.

Illinois, Iowa and Minnesota require record-keeping associated with graded-egg sales and

retention of these records for varying lengths of time. Wisconsin's rule is consistent with neighboring states in this regard.

Summary of Factual Data and Analytical Methodologies

In developing this rule, DATCP reviewed rules which governed eggs in other states, reviewed the federal rules related to eggs, and sought input from egg industry personnel.

Effect on Small Business

This rule is expected to have a positive impact on small-scale egg producers, as it removes the requirement to obtain a food processing plant license for selling eggs at farmers' markets and on egg sales routes. Egg producers selling nest-run eggs to an egg handler will be required to register with DATCP, which will require a very small expenditure of time and, for some producers, postage. The rule will not increase licensing fees. Some licensed egg handling operations may need to upgrade facilities, e.g. sinks, walls, temperature monitoring devices, in order to meet requirements in the rule. The rule will have no economic impact on local governmental units or public utility rate-payers.

Standards Incorporated by Reference

The rule incorporates FDA registration requirements (21 CFR 118.11) and USDA registration requirements (7 CFR part 57.690), the USDA standards for grades and weight classes of shell eggs (AMS 56), handling of restricted eggs (7 CFR parts 57.100, 57.200 and 57.720), and labeling of organic products (7 CFR part 250). The rule also incorporates FDA standards for oil used to protect shell eggs (21 CFR parts 172.878 and 178.3620(a)), and nutrient content or health claims (21 CFR parts 101.54 – 101.83).

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Where and When Comments May Be Submitted

Questions and comments related to this rule may be directed to:

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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this rule is approved by the Board of Agriculture, Trade and Consumer Protection.

1 **SECTION 1.** Chapter ATCP 70.02 (16) (h) and (i) are created to read:

2 ATCP 70.02 (16) (h) The collection, packing and storage of eggs from a flock of not
3 more than 150 laying birds by an egg producer who only sells the eggs directly to consumers at
4 the premises where the eggs were laid, at a farmers' market, or on an egg-sales route.

5 ATCP 70.02 (16) (i) The collection, packaging, and storage of nest-run eggs, as defined
6 in ATCP 88.01, from a flock of more than 150 laying birds by an egg producer who is registered
7 with the department in accordance with ATCP 88.02 and who sells the nest-run eggs to an egg
8 handler.

9 **SECTION 2.** ATCP 70.04 (17) is created to read:

10 ATCP 70.04 (17) EGG HANDLING FACILITIES. Egg handling facilities shall meet the
11 requirements in ATCP 88.06 and ATCP 88.08.

12 **SECTION 3.** ATCP 70.06 (11) is created to read:

13 ATCP 70.06 (11) EQUIPMENT AND UTENSILS IN EGG HANDLING FACILITIES. Equipment for
14 candling, grading and weighing eggs shall meet the requirements of ATCP 88.12 (5).

15 **SECTION 4.** ATCP 70.09 (8) is created to read:

16 ATCP 70.09 (8) EGG CLEANING AND STORAGE. Cleaning and storage of eggs shall be
17 done in compliance with the requirements of ATCP 88.20.

18 **SECTION 5.** ATCP 70.10 (6) is created to read:

19 ATCP 70.10 (6) EGG PACKAGING AND LABELING. The packaging and labeling of eggs
20 shall be done in compliance with the requirements of ATCP 88.32, ATCP 88.34, and ATCP
21 88.38.

1 ATCP 88.14 Cleaning and sanitizing equipment and utensils.

2 **Subchapter IV-Egg Handling Operations**

3 ATCP 88.16 Personnel standards.

4 ATCP 88.18 Temperature standards.

5 ATCP 88.20 Egg cleaning and storage operations.

6 ATCP 88.22 Candling.

7 ATCP 88.24 Grading standards for chicken eggs.

8 ATCP 88.26 Minimum tolerance standards.

9 ATCP 88.28 Restricted eggs.

10 ATCP 88.30 Shell egg protection.

11 **Subchapter V-Packing and Labeling**

12 ATCP 88.32 Egg packing.

13 ATCP 88.34 Egg labeling.

14 ATCP 88.36 Labeling of baluts.

15 ATCP 88.38 Deceptive practices.

16 **Subchapter VI-Recordkeeping and Recall Planning**

17 ATCP 88.40 Dealers buying eggs from producers; receipts.

18 ATCP 88.42 Recall plan.

19

20 **SUBCHAPTER I**

21 **GENERAL PROVISIONS**

22 **ATCP 88.01 Definitions.** In this chapter:

(1) "Ambient temperature" means the temperature of the air surrounding eggs or packages of eggs.

(2) "Balut" means a fertile egg which is incubated for a period of time shorter than is necessary for hatching.

(3) "Candling" means carefully examining, in a dark place, the interior and exterior of a whole egg that is placed in front of a strong light source.

(4) "Check" means an egg that has a broken shell or crack in the shell but has intact shell membranes and no leaking of contents.

(5) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(6) "Dirty" means an egg, with an unbroken shell, that has either of the following:

(a) Dirt or foreign material adhering to the shell's surface.

(b) Prominent or moderate stains covering more than 1/32 of the shell surface area if localized, or 1/16 of the shell surface area if scattered.

(7) "Egg" means the shell egg of the domestic chicken, *Gallus gallus domesticus*; turkey, duck, goose, guinea or other avian species whose eggs are consumed by humans.

(8) "Egg handler" means a person who washes, grades, sizes, candles, packages, stores, handles, or otherwise prepares eggs for sale. For the purposes of this part, a person who handles nest-run eggs and otherwise prepares nest-run eggs for sale is not considered an egg handler.

(9) "Egg producer" means a person who sells eggs only laid by birds owned by that person. Eggs sold by an egg producer may or may not be washed, candled and graded.

(10) "Egg sales route" means one or more residences inhabited by consumers who regularly buy eggs from an egg producer traveling to the residences.

1 (11) "Farmers' markets" means a common facility where two or more farmers or growers
2 gather on a regular basis to sell raw agricultural commodities and processed foods which they
3 produce, directly to consumers.

4 (12) "Federal egg grading act" means the agricultural marketing act of 1946, as amended
5 (7 USC 1621 et seq.), and U.S. standards, grades and weight classes for shell eggs issued under
6 the act.

7 (13) "Federal egg products inspection act" means the egg products inspection act of 1970
8 (21 USC 1031-1056), and regulations issued under the act in 7 CFR part 57 and 9 CFR part 590.

9 (14) "Federal egg safety rule" means regulations in 21 CFR parts 16.5 (a) (5) and 118,
10 and enforced by the US food and drug administration.

11 (15) "Inedible egg" means an egg in which any of the following is present:

12 (a) Black rot.

13 (b) Yellow rot.

14 (c) White rot.

15 (d) Mixed rot, also known as addled egg.

16 (e) Sour egg.

17 (f) Green egg white.

18 (g) Stuck yolk.

19 (h) Mold.

20 (i) Mustiness.

21 (j) A blood ring observable upon candling.

22 (k) An embryo chick at or beyond the blood ring stage, unless such egg is classified as a
23 balut.

1 (1) Adulteration as defined under s. 97.02, Stats.

2 (16) "Incubator reject" means an egg that has been subjected to incubation and has been
3 removed from incubation during the hatching operations as infertile or otherwise unhatchable.

4 (17) "Leaker" means an egg that has a crack or break in the shell and shell membranes, to
5 the extent that the egg contents are exposed or are exuding or free to exude through the shell.

6 (18) "Loss" means an egg that is unfit for human food because it is smashed or broken so
7 that its contents are leaking; or overheated, frozen, or contaminated.

8 (19) "Nest-run" means eggs that do not receive more than minimal washing, and are not
9 graded or candled before sale, with the exception that some obviously restricted eggs are
10 removed.

11 (20) "Official egg products plant" means a place of business, regulated by the United
12 States department of agriculture under the federal egg products inspection act, that manufactures
13 egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing,
14 cooling, freezing, drying, or packaging egg products.

15 (21) "Package" has the meaning given in s. ATCP 90.01 (16).

16 *Note:* A "package" of eggs is the retail package in which the eggs are sold to a
17 consumer. A "package" is different from a shipping container.

18 (22) "Packing" means placing eggs into a package or shipping container.

19 (23) "Person" means an individual, corporation, partnership, limited liability company,
20 cooperative, association or other business entity.

21 (24) "Restricted egg" means any egg that is a check, dirty, incubator reject, inedible,
22 leaker or loss.

23 (25) "Shipping container" means any box, case, rack or other container used to distribute
24 packages of eggs, or bulk or loose eggs, to a seller or institutional purchaser of eggs.

1 (26) "Storage" means the holding of eggs before sale for longer than 24 hours.

2 (27) "U.S. standards, grades, and weight classes for shell eggs" means standards
3 maintained by the agricultural marketing service of the United States department of agriculture
4 and published in United States Standards, Grades, and Weight Classes for Shell Eggs (AMS 56),
5 July 20, 2000.

6 (28) "U.S. Consumer Grade B" means eggs which are at least 90 percent grade B quality
7 or better, of which not more than 10 percent are checks and not more than 0.50 percent (at
8 origin) or 1 percent (at destination) are leakers, dirties, or loss (due to meat or blood spots) in any
9 combination, except that such loss may not exceed 0.30 percent. Other types of loss are not
10 permitted. In addition, no individual case may contain a percentage of grade B quality eggs that
11 is more than 10 percentage points greater than the minimum permitted for the lot average.

12 (29) "Warehouse" has the definition in 97.27(1)(b).

13 **ATCP 88.02 Licensing and Registration (1) FOOD PROCESSING PLANT LICENSE**

14 REQUIRED. Except as provided under sub (3), no egg handler may conduct egg handling activities
15 without a valid license issued by the department for a food processing plant under s. 97.29, Stats.
16 The license holder shall meet all requirements of s. ATCP 70.03.

17 (2) FOOD WAREHOUSE LICENSE REQUIRED. No egg producer or egg handler may receive
18 eggs from another egg producer or egg handler and store the eggs for more than 24 hours before
19 selling them without a valid license issued by the department for a food warehouse under s.
20 97.27, Stats.

21 (3) LICENSE EXEMPTIONS. A food processing plant license is not required under s. 97.29,
22 Stats., or this section, for:

1 (a) An egg producer collecting, packing and storing eggs from a flock of not more than
2 150 birds and who only sells the eggs directly to consumers at the premises where the eggs were
3 laid, a farmers' market or on an egg sales route. The eggs shall be labeled as ungraded and
4 uninspected and packages containing the eggs shall have the seller's name, address, and pack
5 date on them.

6 (b) An egg producer collecting, packaging, and storing nest-run eggs from a flock of
7 more than 150 laying birds and who is registered with the department under sub. 4, and who sells
8 the nest-run eggs to an egg handler.

9 (4) REGISTRATION. An egg producer, exempt from food processing plant licensing
10 requirements under sub. 3(b), shall register with the department before selling eggs. Registration
11 may occur in any license year ending March 31, and the registration expires at the end of the
12 license year. Registration shall be in writing on a form provided by the department or online at
13 <http://datcp.wi.gov>. The registration shall include information reasonably required by the
14 department, including the registrant's name and address, and information related to the location
15 and scope of the registrant's egg sales. There shall be no fee to register.

16 (5) RETAIL FOOD ESTABLISHMENT LICENSE. Except for egg producers selling eggs
17 directly to consumers at the egg producer's premises, no egg producers may sell eggs directly to
18 consumers, including sales at a farmers' market or on an egg sales route, without a valid license
19 issued by the department for a retail food establishment under s. 97.30, Stats. The license holder
20 shall meet all requirements of s. ATCP 75.03.

21 **ATCP 88.04 Federal registrations and records. (1) REGISTRATION REQUIRED.**

22 (a) An egg producer, licensed or registered with the department, shall also be registered
23 with the US food and drug administration, if required under 21 CFR part 118.11 of the federal

egg safety rule.

(b) An egg producer or egg handler who grades and packs eggs for the ultimate consumer, and is licensed with the department, shall also be registered with the US department of agriculture, if required under 21 CFR part 57.690 of the federal egg products inspection act.

(2) REGISTRATION RECORDS. Egg handlers who receive eggs from producers who own 3000 or more laying birds shall maintain records verifying that those producers have registered with the US food and drug administration as required by the egg safety rule.

SUBCHAPTER II

EGG FACILITIES

ATCP 88.06 Egg handling and storage facilities. (1) CONSTRUCTION AND MAINTENANCE; GENERAL. Buildings and facilities used in the operation of an egg handling facility shall be of sound construction, and shall be capable of being maintained in a clean and sanitary condition. The interior and exterior portions of an egg handling facility, and the premises on which the egg handling facility is located, shall be kept free of unhealthful or unsanitary conditions, and shall be maintained in compliance with this chapter. The premises surrounding an egg handling facility shall be well drained and shall be kept in a clean and orderly condition. The premises shall be kept free of accumulations of trash, garbage, and other potential health nuisances.

(2) FLOORS, WALLS AND CEILINGS. Floors, walls and ceilings in an egg handling facility shall be kept clean and in good repair. Floors, walls and ceilings in egg handling areas, toilet rooms, and areas used for the cleaning or storage of equipment or utensils shall be constructed of smooth, impervious and easily cleanable materials. This does not prohibit the use of easily

1 cleanable anti-slip floors. Walls and ceilings in egg handling areas shall be light colored. The
2 junctions of walls and floors in egg handling areas shall be coved to facilitate cleaning.
3 Floors which are waterflushed for cleaning, or on which water or fluid wastes are discharged,
4 shall have an adequate number of floor drains and be adequately sloped to ensure proper
5 drainage to the floor drains.

6 (3) DOORS AND WINDOWS. Doors, windows, skylights, transoms and other openings to the
7 outside shall be tight-fitting, free of breaks, and effectively screened or protected against the
8 entry of rodents, insects, birds and other animals. External doors, other than overhead doors in
9 delivery areas, shall be self-closing. External doors shall be kept closed when not in use.

10 (4) LIGHTING. (a) Lighting in every area of an egg handling facility, whether natural or
11 artificial, shall be sufficient for the purpose for which the area is used.

12 (b) Artificial lights in egg handling areas shall be equipped with protective shields or
13 shatter resistant bulbs.

14 (c) The lighting of the interior of an egg handling facility shall be adequate to disclose
15 dirty eggs or packing materials and egg or packing material defects that may affect the safety,
16 sanitation, or quality of eggs. Egg handling areas shall be illuminated to the following levels
17 measured 3 feet above the floor:

18 1. Not less than 20 foot candles (215 lux) in egg handling areas, equipment and utensil
19 cleaning areas, handwashing areas and toilet areas.

20 2. Not less than 10 foot candles (108 lux) in egg storage areas.

21 (5) VENTILATION, HEATING AND COOLING. (a) An egg handling facility, including egg
22 handling areas, locker rooms, toilet rooms, employee break rooms, and garbage or rubbish

1 storage areas, shall be adequately ventilated, heated and cooled as needed to meet the
2 temperature requirements in s. ATCP 88.18.

3 (b) Ventilation shall be adequate to keep the egg handling facility free of excessive heat,
4 condensation, vapors, obnoxious odors, smoke and fumes.

5 (c) Heating, cooling and ventilating systems, including ducts and pipes over egg handling
6 areas, shall be designed or located to prevent conditions whereby drips or condensate may
7 contaminate eggs or egg packages. Intake fans shall be equipped with filters that are readily
8 removable for cleaning and replacement, and shall be kept clean. Any intake or exhaust fans, and
9 ventilation ducts shall be kept clean and in good repair and shall be screened or louvered to
10 exclude dust and insects.

11 (6) TOILET FACILITIES. (a) A sufficient number of sanitary toilets to accommodate all
12 employees, in accordance with applicable state and local regulations, shall be provided in
13 convenient locations.

14 (b) Toilet rooms shall be completely enclosed, well-lighted and equipped with
15 tight-fitting doors. Toilet rooms and fixtures shall be easily cleanable, and shall be kept clean
16 and in good repair. Toilet rooms contiguous with egg handling facilities shall be equipped with
17 self-closing doors, separately vented to the outside, equipped with an exhaust fan capable of
18 creating a negative pressure within the toilet facility, and shall not open directly into an egg
19 handling area.

20 (c) Handwashing facilities shall be located in or adjacent to every toilet room.
21 Handwashing facilities serving toilet rooms shall include hot and cold running water, soap in a
22 soap dispenser, and a sanitary single-service means of drying the hands. A sign directing
23 employees to wash their hands shall be prominently posted in every toilet room used by

employees. Handwashing facilities serving toilet rooms shall comply with all of the following requirements if they are installed after November 1, 2009, or if they are located in an egg handling facility that is initially licensed or licensed to a new operator after November 1, 2009:

1. The facility shall be served by hot and cold running water provided through a mixing valve or combination faucet, or by tempered potable water.

2. Faucets shall be of a type which are not hand-operated. If a self-closing, slow-closing or metering faucet is used, that faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet

(d) An easily cleanable covered trash receptacle and an adequate supply of toilet tissue shall be available in every toilet room at all times.

(7) CLEANING FACILITIES. (a) If equipment, utensils or egg packages are wet-cleaned or sanitized manually, the egg handling facility shall be equipped with wash and rinse sinks which are suitable for all manual cleaning and sanitizing operations. Sinks shall be conveniently located and adequate in number. Each sink shall be constructed of stainless steel or other materials approved by the department. Each sink shall have at least 2 compartments.

(b) Every sink compartment shall be large enough to accommodate the immersion of at least 50% of the largest item to be cleaned or sanitized in the sink. Every sink compartment shall be served by hot and cold running water, and shall be cleaned before each use.

(c) Drain boards shall be provided in connection with every sink. Drain boards shall be large enough to accommodate soiled equipment and utensils before washing, and clean equipment and utensils after the drain boards are cleaned and sanitized. Drain boards shall be located and constructed so that they do not interfere with washing and sanitizing operations. This

paragraph does not prohibit the use of easily movable dish tables as drain boards if the dish tables comply with this paragraph.

(d) Brushes and cleaning tools shall be kept clean and in good repair. Wiping cloths used to clean equipment and utensils shall be cleaned, sanitized and dried daily, and shall be stored in an approved sanitizing solution between uses during the processing day. Sanitizing solutions for wiping cloths shall be changed at least daily. Wiping cloths used to clean food contact surfaces of equipment and utensils shall not be used for any other purpose. Single service disposable towels may be used in place of re-usable cloths if they are discarded after each use.

(e) If a mechanical system is used to clean or sanitize equipment, utensils or egg containers, the mechanical system shall be designed, installed and maintained so that it is fully effective for the purpose used.

(8) PLUMBING SYSTEM AND SEWAGE DISPOSAL. Sewage and waste materials from an egg handling facility shall be removed in a sanitary manner, in compliance with applicable state and local regulations. All plumbing, plumbing fixtures, and equipment shall be designed, installed and maintained to prevent backflow, backsiphonage and cross-connections.

Note: Plumbing and plumbing fixtures are subject to the requirements of chs. SPS 381 to 387, enforced by the department of safety and professional services.

(9) GARBAGE AND REFUSE DISPOSAL. (a) Garbage and refuse shall not be allowed to accumulate in or around an egg handling facility. Garbage and refuse shall be removed as often as necessary to maintain the premises in a clean and sanitary condition.

(b) A separate room or a designated area for the accumulation of garbage and refuse must be provided in facilities which do not have a system for the daily removal or destruction of garbage and refuse. Garbage and refuse storage areas shall be constructed and maintained so that they do not attract or harbor insects, rodents or other animals.

1 (c) Garbage and refuse shall be held in durable, leak-proof, easily cleanable, and
2 pest-resistant containers. Containers used to hold inedible waste egg products or materials soiled
3 with eggs shall be kept covered with tight-fitting lids, and shall be cleaned when necessary to
4 prevent insanitary conditions.

5 (d) Garbage and refuse shall not be burned on the premises, except in compliance with
6 state and local laws. Garbage and refuse shall not be burned on the premises if burning may
7 contaminate food.

8 (10) CONTROL OF PESTS. (a) Effective measures shall be taken, to control insects, rodents
9 and other pests in an egg handling facility. Pesticides and other hazardous substances shall not be
10 stored or used in a manner which may contaminate food, or which may constitute a hazard to
11 employees or the public. Pesticides shall not be stored, handled or used in a manner inconsistent
12 with label directions, or in a negligent manner.

13 (b) All domestic animals shall be kept out of egg handling areas.

14 **ATCP 88.08 Egg handling rooms** (1) EGG WASHING AND EGG GRADING ROOMS (a)
15 Egg washing and grading rooms shall be kept clean during washing, candling, grading and
16 packaging operations and shall be thoroughly cleaned at the end of each day's operations.

17 (b) Areas in which manual candling is done shall be dark enough to permit accurate
18 determinations of egg quality.

19 (2) EGG STORAGE ROOMS. (a) Egg storage areas shall be capable of maintaining eggs at
20 ambient temperatures required under s. ATCP 88.18, regardless of reasonably foreseeable
21 external temperatures.

22 (b) Every egg storage area shall be equipped with one or more accurate temperature
23 measuring devices to monitor compliance with temperature standards under s. ATCP 88.18. The

1 ambient temperature shall be monitored in one or more representative locations of the egg
2 storage facility.

3 (c) An egg storage area shall be kept clean at all times. Storage areas, equipment and
4 utensils and stored eggs shall be arranged so that all parts of the egg storage area can be
5 effectively cleaned and inspected.

6 (d) Eggs shall either be stored at a sufficient height above the floor surface to allow
7 cleaning of the floor surface under the stored eggs, or on a pallet or other supporting structure
8 which can be readily lifted or moved to allow cleaning of the floor surface underneath.

9 **ATCP 88.10 Operations water.** (1) Operations water shall be obtained from a source
10 that complies with ch. NR 811 or 812.

11 (2) Operations water shall be available in consistently adequate quantity, and shall
12 comply with the health related drinking water standards in ch. NR 809.

13 (3) If an egg handling facility operator obtains operations water from a privately owned
14 water system, the operator shall sample that water at least once annually. The operator shall have
15 each sample tested by a laboratory certified under ch. ATCP 77, for compliance with the
16 microbiological and nitrate level standards under ss. NR 809.07 and NR 809.30.

17 (4) An egg handling facility operator shall keep on file, for at least one year, the results of
18 all microbiological and other tests conducted on operations water sampled at the egg handling
19 facility.

20 SUBCHAPTER III

21 EQUIPMENT AND UTENSILS

22 **ATCP 88.12. Equipment and utensil requirements.** (1) CONSTRUCTION AND
23 MAINTENANCE; GENERAL. (a) Equipment and utensils shall be of sanitary design and

1 construction. Equipment and utensils shall be readily accessible for cleaning and inspection and
2 shall be constructed so that items can be easily cleaned. Equipment and utensils shall be kept
3 clean and in good repair.

4 (b) EGG CONTACT SURFACES. Egg contact surfaces of equipment and utensils shall be
5 constructed of stainless steel or other materials which are smooth, impervious, nontoxic, non-
6 corrodible, nonabsorbent and durable under normal use conditions. Egg contact surfaces shall be
7 easily cleanable, and shall be free of breaks, open seams, cracks or similar defects. Egg contact
8 surfaces shall not impart any odor, color, taste or adulterating substance to food. Food contact
9 surfaces shall be readily accessible for manual cleaning.

10 (c) SINGLE-SERVICE ARTICLES. Single-service articles shall be stored in the original
11 containers in which they were received, or in other closed containers which will protect them
12 from contamination prior to use. Single-service articles shall not be re-used.

13 (2) ADEQUACY AND ACCURACY OF MEASURING DEVICES, INSTRUMENTS, AND CONTROLS.
14 Every cold storage compartment used to store or hold eggs shall be equipped with a thermometer
15 or other device which accurately indicates the ambient temperature in the compartment.
16 Instruments and controls used for measuring, regulating and recording air or wash water
17 temperatures, humidity, or wash water pH shall be adequate for the intended use.

18 (3) LUBRICATION. Equipment shall be designed and constructed so that gear and bearing
19 lubricants do not come in contact with eggs or egg contact surfaces. Only food grade lubricants
20 may be used in equipment if incidental egg contact may occur.

21 (4) LOCATION AND INSTALLATION OF EQUIPMENT. Equipment which cannot be easily
22 moved shall be installed in a manner which prevents liquid or debris from accumulating under or
23 around the equipment. Equipment shall be installed so that there is adequate clearance on all

sides for cleaning and maintenance. This does not apply to that portion of a tank or container which is designed and installed to protrude into or through the wall or ceiling of an egg handling facility. Air intake vents for egg storage containers shall be located in handling areas or shall be properly filtered.

(5) EQUIPMENT FOR CANDLING, GRADING AND WEIGHING EGGS. (a) Egg candling lights shall be strong enough to disclose dirty eggs and to permit accurate determinations of egg quality.

(b) If automated grading equipment is used to detect blood inside of eggs or cracked shells or check eggs, the equipment shall be calibrated and adjusted for sensitivity so that the handled eggs comply with applicable grade standards.

(c) Equipment used to weigh eggs shall be calibrated at least annually for accuracy.

ATCP 88.14 Cleaning and sanitizing equipment and utensils. (1) CLEANING AND SANITIZING EQUIPMENT AND UTENSILS; GENERAL. Except as provided in sub. (3):

1. All egg contact surfaces of equipment and utensils shall be cleaned and sanitized after each day's use, or more frequently if necessary.

2. Sanitizers and methods used to sanitize equipment shall comply with s. ATCP 70.11.

3. The department may approve alternative cleaning and sanitizing procedures under subsection (2).

(2) ALTERNATIVE CLEANING AND SANITIZING PROCEDURES. (a) An egg handler may request the department to approve alternative cleaning and sanitizing procedures under this section. The department shall approve alternative cleaning and sanitizing procedures if the department determines that those alternative procedures will effectively prevent egg contamination and ensure the microbiological safety of the eggs.

1 (b) The egg handler shall submit a written request to use alternative cleaning and
2 sanitizing procedures as allowed under this subsection. The request shall include all of the
3 following, and any other information required by the department:

4 1. A clear and complete description of the affected egg handling equipment, including
5 any continuously-operated equipment. The description shall identify sanitary design features
6 that are relevant to the proposed cleaning and sanitizing procedures.

7 2. The types of eggs handled with the affected equipment, and the temperatures to which
8 the eggs will be exposed during handling.

9 3. A clear and complete description of the alternative cleaning and sanitizing procedure,
10 including cleaning and sanitizing equipment, frequency, methods, materials, and relevant process
11 parameters such as time and temperature. The description shall include a flow diagram of the
12 cleaning and sanitizing procedure.

13 4. A written statement, by the egg handler, that the alternative cleaning and sanitizing
14 procedure has been evaluated and determined to be effective in preventing egg contamination
15 and ensuring the microbiological safety of the eggs. The written statement shall be based on a
16 written plan under subd. 5.

17 5. A written plan, prepared by qualified personnel, to ensure that the alternative cleaning
18 and sanitizing procedure will be effective in preventing egg contamination and ensuring the
19 microbiological safety of eggs. The written plan shall identify and assess foreseeable hazards,
20 identify critical control points, identify parameter limits associated with the critical control points
21 which must be met to ensure safety, and identify monitoring procedures and controls to ensure
22 that the procedure is effective.

1 (c) The department shall grant or deny a request under par. (a), in writing, within 60 days
2 after it receives a complete request, except that the department may give written notice extending
3 the action deadline for reasons stated in the notice.

4 (d) The department may qualify or limit its approval under par. (c), as it deems
5 appropriate. The department may withdraw its approval for cause, including information that
6 casts doubt on the efficacy or faithful implementation of the approved procedure.

7 (e) An egg handler that implements an alternative cleaning and sanitizing procedure
8 approved under this subsection shall do all of the following:

9 1. Control and monitor the procedure to ensure that it is particularly implemented as
10 approved, and is effective in preventing egg contamination and ensuring the microbiological
11 safety of the eggs.

12 2. Promptly notify the department of any material deviation from the approved procedure,
13 and any information that casts doubt on the efficacy of the procedure.

14 3. Collect and retain data and records to document, on a continuing basis, the particular
15 implementation and efficacy of the approved procedure. The operator shall retain the data and
16 records for at least 90 days, and shall make them available upon request for inspection and
17 copying by the department.

18 (3) STORAGE OF CLEAN EQUIPMENT AND UTENSILS. Equipment and utensils, unless stored
19 in an approved sanitizing solution, shall be stored so as to drain dry. Equipment and utensils shall
20 be protected from contamination prior to use.

21 SUBCHAPTER IV

22 EGG HANDLING OPERATIONS

1 **ATCP 88.16 Personnel standards.** (1) **CLEANLINESS.** Persons engaged in egg handling
2 shall maintain a high degree of personal cleanliness, and shall observe good hygienic practices
3 during all working periods. Persons engaged in egg handling shall wash their hands before
4 beginning work and upon returning to work after using toilet facilities, eating, smoking or
5 engaging in other activities which may contaminate the hands. Persons engaged in egg handling
6 shall keep their fingernails clean and neatly trimmed.

7 (2) **CLOTHING AND JEWELRY.** Persons in egg handling areas shall wear clean, washable
8 outer garments. Persons working in egg handling areas shall remove all jewelry from their hands
9 and fingers before having any direct manual contact with eggs or egg contact surfaces. Jewelry
10 shall not be worn in a manner which creates a risk of egg contamination. This subsection does
11 not apply to plain band wedding rings.

12 (3) **EMPLOYEE HEALTH.** No person who, by medical examination or supervisory
13 observation, has, or is reasonably suspected of having, any of the following conditions may work
14 in an egg handling plant in any capacity that may result in the contamination of eggs, or in the
15 contamination of equipment or utensils used to process or handle eggs:

16 (a) A communicable disease.

17 (b) Any symptom of an acute gastrointestinal illness.

18 (c) A discharging or open wound, sore or lesion on the hands, arms or other exposed
19 portions of the body.

20 (4) **CONSUMPTION OF FOOD OR BEVERAGES, AND USE OF TOBACCO.** No person may
21 consume food or beverages or use tobacco in any egg handling area, or in any area where egg
22 processing equipment or utensils are cleaned or stored. Employees may not consume food or

1 beverages or use tobacco except in designated areas which are separated from egg handling
2 areas. This subsection does not prohibit a sanitary water fountain in an egg handling area.

3 **ATCP 88.18 Temperature standards.** (1) TEMPERATURE BEFORE PACKING. Eggs that
4 are held, by an egg handler before packing, for more than 36 hours after they are laid shall be
5 kept at an ambient temperature of 45° Fahrenheit (7° Celsius) or less. Eggs that have been
6 refrigerated may be held at room temperature, for up to 36 hours immediately before washing, to
7 decrease risk of thermal checks caused by washing cold eggs with warm water.

8 *Note:* It is recommended that eggs be processed and packed as soon as practicable and
9 within 5 days after they are laid.

10 (2) TEMPERATURE AFTER PACKING. Eggs which have been packed by an egg handler
11 shall be kept at an ambient temperature of 45° Fahrenheit (7° Celsius) or less at all times,
12 including while they are being transported.

13 (3) TEMPERATURE DURING TRANSPORT. During transport to a retail food establishment
14 and upon receipt at a retail food establishment eggs shall be held at an ambient air temperature of
15 45° Fahrenheit (7° Celsius) or less.

16 *Note:* Mechanical refrigeration is recommended for eggs that are in transport for more
17 than 4 hours.

18
19 (4) TEMPERATURE STANDARDS FOR RETAIL SALE. Eggs held for retail sale shall be held at
20 an ambient temperature of 41° Fahrenheit (5° Celsius) or less.

21 (5) TEMPERATURE STANDARDS FOR BALUTS. Baluts must be refrigerated upon removal
22 from incubation and maintained at a temperature of 41° Fahrenheit or less while transported,
23 stored, or held for retail sale.

24 (6) SALE OF FROZEN EGGS PROHIBITED. No person may sell or offer for sale any shell
25 eggs that have been frozen.

1 **ATCP 88.20 Egg cleaning and storage operations.** (1) Eggs shall be cleaned to remove
2 debris and stains.

3 (2) Compounds used to clean or sanitize eggs shall be listed and used at concentrations
4 specified in 21 CFR part 178.1010, and registered for this use with the U.S. environmental
5 protection agency.

6 (3) Water used to clean shell eggs shall be:

7 (a) At least 20° Fahrenheit warmer than the eggs, and not colder than 90° Fahrenheit.

8 (b) Changed at least every 4 hours to maintain sanitary conditions, and at the end of each
9 shift.

10 (4) Eggs shall not be left standing or soaking in cleaning water.

11 (5) Washed eggs shall be dry before they are placed in packages or shipping containers.

12 (6) Dirty eggs that cannot be cleaned shall be discarded as restricted eggs.

13 (7) An egg handling facility operator shall handle and store eggs:

14 (a) In a safe and sanitary manner, and under sanitary conditions, to protect the safety and
15 wholesomeness of the eggs.

16 (b) In a neat and orderly manner, so that the eggs are readily accessible for inspection and
17 movement, and so that the egg storage area can be readily inspected and cleaned. The amount of
18 eggs stored in an egg storage area shall not exceed the reasonable capacity of that area.

19 *Note:* Dirty eggs may be dry cleaned with an egg brush or rubbed with a sanding sponge
20 and sand paper.

21 **ATCP 88.22 Candling.** CANDLING REQUIREMENTS. A candling light or automated
22 grading equipment is required for determining the interior and exterior quality of eggs. Egg
23 candling lights and candling light areas shall meet the requirements of ss. ATCP 88.12 (5) (a) to
24 (c). A candling light must be used to verify the performance of automated grading equipment.

ATCP 88.24 Grading standards for chicken eggs. (1) GRADING STANDARDS FOR CHICKEN EGGS. Except for chicken eggs clearly labeled as “ungraded” as required under s. ATCP 88.34 (1) (b), chicken eggs sold or distributed in this state by an egg handler licensed under s. ATCP 88.02 shall be labeled as grade AA, A, or B, and shall conform to the United States grade standards specified for those grades under the federal egg grading act and the U.S. standards, grades, and weight classes for shell eggs.

(2) CHICKEN EGG SIZES. Except for chicken eggs clearly labeled as “ungraded” as required under s. ATCP 88.34 (1) (b), chicken eggs sold or distributed in this state by an egg handler licensed under s. ATCP 88.02 shall be labeled as Jumbo, Extra Large, Large, Medium, Small or Peewee, and shall conform to the United States size standards specified for those sizes under the federal egg grading act and U.S. standards, grades, and weight classes for shell eggs and shown in the table below.

Size or weight class	Minimum net weight per dozen (ounces)	Minimum net weight per 30 dozen (pounds)	Minimum net weight for individual eggs at rate per dozen (ounces)
Jumbo	30	56	29
Extra large	27	50.5	26
Large	24	45	23
Medium	21	39.5	20
Small	18	34	17
Peewee	15	28	---

Note: United States grades and sizes are fully described in “United States Standards, Grades, and Weight Classes for Shell Eggs” (AMS 56), July 20, 2000, published by the Agricultural Marketing Service of the United States Department of Agriculture. A copy of the standards may be accessed online at:
<http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3004376>

ATCP 88.26 Minimum tolerance standards. (1) LIMITATIONS ON SALE AND DISTRIBUTION. No person may sell or distribute for sale as human food any eggs that fail to meet tolerance standards for U.S. Consumer Grade B eggs under U.S. standards, grades, and weight

1 classes for shell eggs, regardless of whether the eggs are labeled as graded or ungraded eggs.

2 This section does not apply to eggs which the egg producer sells directly to a household
3 consumer on the premises where the eggs are produced and are clearly labeled as "ungraded" as
4 required under s. ATPC 88.34 (1) (b).

5 **ATPC 88.28 Restricted eggs. (1) PROHIBITION AGAINST SALE OF RESTRICTED EGGS. (a)**

6 Except as provided in par. (b), no person shall buy, sell, or transport, or offer to buy or sell, or
7 offer or receive for transportation any restricted eggs and no egg handler shall possess any
8 restricted eggs or use any restricted eggs in the preparation of human food.

9 (b) Egg producers collecting eggs from a flock of more than 3,000 laying birds shall only
10 sell, transport, possess, or use restricted eggs in compliance with 7 CFR 57.100 of the federal egg
11 products inspection act. Egg producers collecting eggs from a flock of 3,000 or fewer laying
12 birds shall:

13 1. Sell no more edible restricted eggs than the amount allowed by the tolerances in the
14 official standards for U.S. Consumer Grade B shell eggs.

15 2. Sell checks and dirties only on the premises where the eggs are produced directly to
16 consumers for use by the consumer and the consumer's non-paying guests.

17 (2) DISPOSITION OF RESTRICTED EGGS. Egg producers collecting eggs from a flock of
18 more than 3,000 hens shall dispose of restricted eggs in compliance with 7 CFR 57.720 and
19 maintain records as required in 7 CFR 57.200 of the federal egg products inspection act. Eggs
20 producers collecting eggs from a flock of 3,000 or fewer hens shall dispose of restricted eggs by:

21 (a) Shipping checks and dirties directly or indirectly to an official egg products plant for
22 processing.

1 (b) Crushing and placing loss and inedible eggs in a container containing a sufficient
2 amount of approved denaturant or decharacterizing substance, as approved the department. The
3 denatured and decharacterized product shall be labeled "Restricted eggs. Not to be used as
4 human food."

5 (3) DISPOSITION OF PACKED EGGS EXCEEDING RESTRICTED EGG TOLERANCES.

6 (a) Eggs which are placed in a package for the ultimate consumer and which have been
7 found to exceed the tolerance for restricted eggs permitted in the official standards for U.S.
8 Consumer Grade B eggs under U.S. standards, grades, and weight classes for shell eggs shall be
9 identified as required in ss. 7 CFR 57.800 and 57.860 and shall be:

- 10 1. Shipped directly or indirectly to an official egg products processing plant for proper
11 segregation and processing; or
12 2. Regraded so that they comply with the official standards; or
13 3. Designated for animal food after being denatured and decharacterized and labeled
14 "Restricted eggs. Not to be used as human food."

15 **ATCP 88.30 Shell egg protection.** EGG SHELL OIL. If oil is used to protect shell eggs,
16 the oil shall meet the requirements of 21 CFR parts 172.878 and 178.3620(a). Oil having any off
17 odor, or that is obviously contaminated, shall not be used to protect shell eggs. Any shell egg
18 protection oil treatment shall be performed in a manner that prevents egg contamination and
19 preserves egg quality. Eggs with excess moisture on the shell shall not be treated with oil to
20 protect the shell.

21 SUBCHAPTER V

22 PACKING AND LABELING

1 **ATCP 88.32 Egg packing.** (1) EGG PACKING TO MAINTAIN QUALITY. Eggs shall be
2 handled and packed to minimize the likelihood that condensation will accumulate on the eggs.

3 (2) Eggs shall be packed so that a majority of the packed eggs are placed in the package
4 or shipping container with the small end down.

5 (3) Egg packages and shipping containers shall be all of the following:

6 (a) Clean and in good condition.

7 (b) Free of mold, mustiness and off-odors.

8 (c) Sufficiently strong and durable to protect eggs from damage during normal
9 distribution.

10 (d) Packing of eggs in used egg cartons shall only be done using clean cartons on which
11 all markings that do not pertain to the eggs being sold, including brand name, USDA shield, date
12 of pack, expiration date, use-by date, quality and size are obliterated.

13 **ATCP 88.34 Egg labeling.** (1) EGG PACKAGES. Except as provided under sub. (3) (a), a
14 package of eggs shall be labeled with all of the following:

15 (a) Information required under ch. ATCP 90, including all of the following:

16 1. A declaration of product identity under s. ATCP 90.02.

17 2. A declaration of responsibility under s. ATCP 90.03. If the responsible person
18 identified on the package is not the person who packed the eggs, the package shall also include
19 the packer identification number or shell egg handler registration number assigned by the United
20 States department of agriculture, or the packer identification number assigned by the state in
21 which the packing operation is located. A United States department of agriculture (USDA)
22 packer number shall be preceded by the letter "P". A state packer number shall be preceded by a
23 2-letter abbreviation which identifies the state.

1 3. A declaration of net quantity under ss. ATCP 90.04 and 90.08 (16) (c).

2 4. Nutrition labeling under s. ATCP 90.10 and 21 CFR 101.9.

3 (b) The grade and size of the eggs, if required under s. ATCP 88.24. The grade and size
4 shall be printed on the principal display panel in letters not less than 3/16 inch high. If the eggs
5 are not graded, the word "UNGRADED" shall be printed in letters at least 1/4 inch high on the
6 principal display panel. Ungraded eggs may be sold from bulk containers if a sign or placard
7 adjacent to the bulk display identifies the eggs as ungraded eggs.

8 *Note:* Only eggs graded under USDA's Agricultural Marketing Services' voluntary egg-
9 quality grading program are eligible to be packaged in cartons bearing the USDA grade shield or
10 labeled as "USDA" Grade AA, A, or B. Additional information about USDA's egg grading
11 services may be acquired from the following address: National Supervisor Shell Eggs, USDA-
12 AMS Livestock, Poultry, and Seed Program, Poultry Grading Division, 1400 Independence
13 Avenue, SW, Stop 0258, Washington, D.C. 20250. More information may be found online at:
14 <http://www.ams.usda.gov/AMSV1.0/PYShellEggGradingandCertification1>

15 (c) The statement "KEEP REFRIGERATED" or an equivalent statement indicating that
16 the eggs must be refrigerated. The statement shall be printed on the principal display panel in
17 letters not less than 3/16 inch high.

18 (d) The statement "SAFE HANDLING INSTRUCTIONS:" in bold type size followed by
19 the statement "To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are
20 firm, and cook foods containing eggs thoroughly." The statement shall be printed in type size
21 no smaller than 1/16 inch and shall appear in a hairline box. The statement shall appear on the
22 principal display panel, the information panel, or the inside lid of the egg carton.

23 (e) The date on which the eggs were packed. The date of packing may be indicated by
24 an abbreviation consisting of one of the following:

25 1. The first three letters of the month and the calendar date.

26 2. The numerically consecutive day of the year, also known as the Julian calendar date.

27 (f) One of the following dates, in addition to the packing date under par. (e):

1 1. An expiration date or "sell by" date after which the eggs may not be offered for sale or
2 sold at retail. The period from the packing date until the expiration date may not exceed 30 days,
3 including the packing date. The expiration date or "sell by" date shall be designated by at least
4 the first three letters of the month and the date within that month. The date shall be accompanied
5 by a phrase or abbreviation such as "EXP" or "sell by" which clearly identifies it as an expiration
6 date or "sell by" date.

7 2. A "use by" date consisting of at least the first 3 letters of the month, and the date
8 within that month. The date shall be accompanied by a phrase such as "use by," "best if used
9 by" or "use before," which indicates that the consumer should use the eggs before that date. The
10 period from the packing date until the "use by" date shall not exceed 45 days, including the
11 packing date.

12 (2) EGG SHIPPING CONTAINERS. Except as provided under sub. (3), a shipping container
13 of eggs shall be labeled on one end with all of the following information, in letters not smaller
14 than ½ inch high:

15 (a) A statement identifying the contents of the container.

16 (b) The name and address of the responsible person in whose name the eggs are packed
17 and distributed. If the responsible person did not pack the eggs, the shipping container shall also
18 include the packer identification number or shell egg handler registration number under sub. (1)
19 (a) 2. If the responsible person packed the eggs, the packer's identification number or shell egg
20 handler registration number, pursuant to sub. (1) (a) 2., may appear in place of the packer's name
21 and address.

22 (c) The net quantity of eggs contained in the shipping container.

(d) The grade and size of the eggs contained in the shipping container, if required under s. ATCP 88.24.

(e) The statement "KEEP REFRIGERATED" or an equivalent statement indicating that the eggs must be refrigerated.

(f) The date on which the eggs were packed.

(g) One of the following dates, in addition to the packing date under par. (f):

1. An expiration date or "sell by date" after which the eggs may not be sold or offered for retail sale. The period from the packing date to the expiration date or "sell by" date may not exceed 30 days, including the packing date. The expiration date shall be designated by at least the first three letters of the month and the date within that month. The date shall be accompanied by a phrase or abbreviation such as "sell by" or "EXP" which clearly identifies it as an expiration date or "sell by" date.

2. A "use by" date consisting of at least the first 3 letters of the month, and the date within that month. The date shall be accompanied by a phrase such as "use by," "best if used by" or "use before," which indicates that the consumer should use the eggs before that date. The period from the packing date to the "use by" date shall not exceed 45 days, including the packing date.

(3) EGGS SOLD OR SHIPPED BY PRODUCER, EXEMPTION. (a) Subsections (1) and (2) do not apply to either of the following:

1. Eggs which are being shipped from an egg producer to an egg handler who packs the eggs.

2. Eggs which the producer sells directly to household consumers on the premises where the eggs are laid.

(b) Subsection (2) does not apply to a shipping container which holds only identical packages of eggs, provided that the packages are identically labeled according to sub. (1) and the label information can be seen through the shipping container.

(4) EGGS REMOVED FROM RETAIL SALE. (a) No eggs may be sold as whole eggs at retail after the expiration or "sell by" date specified for those eggs under subs. (1) (e) 1. or (2) (g) 1. If otherwise used as human food, the eggs shall meet at least the standard for U.S. Consumer Grade B eggs under U.S. standards, grades, and weight classes for shell eggs.

(b) Eggs labeled with dates under subs. (1) (f) or (2) (g) shall retain those dates and may not be repackaged or relabeled with any other dates.

(5) ORGANIC EGGS. No egg may be displayed or sold in a package labeled "organic" unless the practices employed in egg production and handling are in compliance with the national organic program regulations in 7 CFR part 250, or any rules promulgated by the department under s. 97.09 (5), Stats.

ATCP 88.36 Labeling of baluts. Each container of baluts shall be clearly and conspicuously labeled to inform the consumer that the product is a "balut" or an "incubated fertile egg" or such other term or phrase that is informative and not false or misleading. The label should clearly indicate that the container of baluts should be stored at a temperature 41°F or less.

ATCP 88.38 Deceptive practices. No person may do any of the following in connection with the sale or distribution of eggs:

(1) Misrepresent the grade, size, or quality of the eggs, the date on which the eggs were packed, or the "sell by" or "use by" dates of the eggs.

Note: Terms such as "super jumbo" or "super one dozen," are examples of misrepresentations under subsection 1.

1 (2) Make any unauthorized nutrient content or health claims that do not comply with the
2 requirements of 21 CFR part 101.

3 (3) Sell, offer for sale, or distribute eggs in any misbranded package or shipping
4 container.

5 (4) Offer for sale or sell eggs without clearly indicating the grade and size of the eggs or
6 that they are ungraded.

7 (5) Offer for sale or sell eggs laid by a species other than chicken, without clearly
8 indicating the species of bird that laid the eggs.

9 (6) Represent that eggs are fresh unless they conform to grade standards specified for
10 grade A or grade AA eggs under the federal egg grading act.

11 SUBCHAPTER VI

12 RECORDKEEPING AND RECALL PLANNING

13 **ATCP 88.40 Dealers buying eggs from producers; receipts.** (1) No person may
14 buy eggs from a producer for resale unless that person provides that producer with a written
15 receipt with the purchase date.

16 (2) Receipts for eggs purchased by grade or size shall include all of the following:

17 (a) The grades and sizes of the eggs purchased from the producer, including the number
18 of dozen and price per dozen purchased in each grade and size category. Grades and sizes shall
19 be determined according to s. ATCP 88.24.

20 (b) The date on which the eggs were graded.

21 (c) Whether the eggs were graded by or for the person purchasing the eggs from the
22 producer.

(3) A person required to give a receipt, pursuant to sub. (1), shall keep a copy of the receipt for at least one year, and shall make the receipt available to the department for inspection and copying upon request.

ATCP 88.42 Recall plan. (1) PLAN REQUIRED. An egg handler shall have a written plan for identifying and recalling eggs processed at that egg handling facility, should a recall become necessary. The egg handler shall update the plan as necessary, and shall make it available to the department for inspection and copying upon request.

(2) PLAN CONTENTS. A plan, pursuant to sub. (1), shall do all of the following:

(a) Identify key individuals or positions that are responsible for planning, approving and implementing recalls on behalf of the egg handler.

(b) Identify key individuals or entities to be contacted or consulted in connection with a recall.

(c) Include procedures for the routine identification, dating and tracking of egg lots, so that the affected lots can be identified and distinguished from unaffected lots in a recall.

(d) Include procedures to enable routine identification, dating and tracking of egg shipments from the egg handling facility. Tracking shall identify shipment recipients and contents, cross-referenced to lots, so that recipients of affected lots can be contacted in a recall.

(e) Include procedures for determining the nature and scope of a recall, including affected egg lots, shipments and shipment recipients.

(f) Include procedures for identifying and communicating with affected persons, including suppliers, egg shipment recipients, down-line buyers, consumers, government agencies and others.

1 (g) Identify potential target audiences for recall information, including consumers,
2 distributors and government agencies.

3 (h) Identify potential methods for communicating with target audiences under par. (g).

4 (i) Identify key information, including the identity of the affected eggs, the reason for the
5 recall, and suggested actions to be taken by affected persons, which may be necessary to
6 communicate in a recall.

7 *Note:* A person who violates this chapter may be prosecuted under ss. 93.21 and 97.72,
8 Stats.

9 **SECTION 9. EFFECTIVE DATE.** This rule takes effect on the first day of the month
10 following publication in the Wisconsin administrative register, as provided under s.
11 227.22(2)(intro.).

Dated this _____ day of _____, 2014.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary